

SUMTER COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY

SUBJECT: Cooperative Funding Agreement Between Southwest Florida Water Management District (SWFWMD) and Sumter County for Jumper Creek Watershed Management Plan (N487-4) (Staff recommends approval).

REQUESTED ACTION: Approval

☐ Work Session (Report Only) **DATE OF MEETING:** 2/12/2013
☒ Regular Meeting ☐ Special Meeting

CONTRACT: ☐ N/A Vendor/Entity: SWFWMD
Effective Date: 2/12/2013 Termination Date: 12/31/2016
Managing Division / Dept: Public Works Division/Engineering Branch

BUDGET IMPACT: \$534,092 (FY13-FY16) (\$70,000 in FY13) (already in PWD Budget)

☒ Annual **FUNDING SOURCE:** Stormwater Program 131
☐ Capital **EXPENDITURE ACCOUNT:** 131-397-538-3428
☐ N/A

HISTORY/FACTS/ISSUES:

The Jumper Creek drainage system has shown evidence of flooding problems in the past, and is an area of the County that has never been studied in depth for better watershed management. As part of the PWD Stormwater Management Program initiated in FY12, PWD submitted information to SWFWMD for a Cooperative Funding Initiative (CFI) to have Jumper Creek watershed studied. This will include the first year (FY13 \$140,000) effort of immediate deficiency corrections along Jumper Creek from US 301 to SR 471, such as blockages, undersized or non-permitted cross pipes, siltation of the canal, etc.

SWFWMD staff has been working with PWD staff to bring this study to the BOCC for approval:

- Draft agreement submitted to the County and Southwest Florida Water Management District's (SWFWMD) review process on 09/11/2012
- SWFWMD's agreement templates went through a review and modification process
 - o Template revisions did not change the Scope of Work
 - o Revisions help to ensure SWFWMD will be able to continue to provide cooperative funding assistance for water resource projects into the future
- The draft agreement provided on 09/11/2012 was revised to reflect template revisions
- SWFWMD transmitted agreement to County on 01/30/2013 for signature. See exhibit 1.

To facilitate the immediate corrective measures mentioned above, the PWD staff has obtained and recorded many Perpetual Easements on parcels along Jumper Creek. See exhibit 2.

In addition to the corrective measures performed on FY13, this 4 year program will also provide detailed information on the stormwater system and performance in the Jumper Creek watershed, an important part of the Stormwater Management Program, and modeling information that will allow us to better manage future development, and future storm events. A companion effort to this CFI is SWFWMD's program to fly LiDAR over both the Bushnell and Jumper Creek watersheds at their cost. This data will be pulled into the Jumper Creek study.

Staff recommends the Board approved the Cooperative Funding Agreement

COOPERATIVE FUNDING AGREEMENT
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
SUMTER COUNTY
FOR
JUMPER CREEK WATERSHED MANAGEMENT PLAN (N487-4)

THIS COOPERATIVE FUNDING AGREEMENT is made and entered into by and between the SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida, whose address is 2379 Broad Street, Brooksville, Florida 34604-6899, hereinafter referred to as the "DISTRICT," and SUMTER COUNTY, a political subdivision of the State of Florida, whose address is 7375 Powell Road, Wildwood, Florida 34785, hereinafter referred to as the "COUNTY."

WITNESSETH:

WHEREAS, the COUNTY proposed a project to the DISTRICT for funding consideration under the DISTRICT'S cooperative funding program; and

WHEREAS, the project consists of implementing the Watershed Evaluation and Watershed Management Plan elements of the District's Watershed Management Program (WMP) for the Jumper Creek watershed located in Sumter County, hereinafter referred to as the "PROJECT"; and

WHEREAS, the DISTRICT considers the resource benefits to be achieved by the PROJECT worthwhile and desires to assist the COUNTY in funding the PROJECT.

NOW THEREFORE, the DISTRICT and the COUNTY, in consideration of the mutual terms, covenants and conditions set forth herein, agree as follows:

1. PROJECT CONTACTS AND NOTICES. Each party hereby designates the individual set forth below as its prime contact for matters relating to this Agreement. Notices and reports shall be sent to the attention of each party's prime contact as set forth herein by U.S. mail, postage paid, by nationally recognized overnight courier, or personally to the parties' addresses as set forth below. Notice is effective upon receipt.

Project Manager for the DISTRICT:
Gene Altman, P.E.
Southwest Florida Water Management District
2379 Broad Street
Brooksville, Florida 34604-6899

Project Manager for the COUNTY:
Scott Cottrell, P.E.
Sumter County
319 East Anderson Avenue
Bushnell, Florida 33513

Any changes to the above representatives or addresses must be provided to the other party in writing.

- 1.1 Project Managers are hereby authorized to approve requests to extend a PROJECT task deadline set forth in this Agreement. Such approval must be in writing, explain the reason for the extension and be signed in accordance with each party's signature authority. Project Managers are not authorized to approve any time extension which will result in an increased cost, or which will exceed the expiration date set forth in Paragraph 5, Contract Period.
 - 1.2 Project Managers are authorized to adjust a line item amount of the PROJECT budget contained in the Project Plan set forth in Exhibit "A" or, if applicable, the refined budget as set forth in Subparagraph 3.1 below. The authorization must be in writing, explain the reason for the adjustment, and be signed in accordance with each party's signature authority. Project Managers are not authorized to make changes to the Scope of Work and are not authorized to approve any increase in the amounts set forth in the funding section of this Agreement.
2. SCOPE OF WORK. The DISTRICT shall perform the services necessary to complete the PROJECT in accordance with the Project Plan set forth in Exhibit "A." Any changes to this Agreement, except as provided herein, must be mutually agreed to in a formal written amendment approved by the DISTRICT and the COUNTY prior to being performed by the DISTRICT. The DISTRICT shall be solely responsible for managing the PROJECT and controlling the PROJECT, including the hiring and supervising of any consultants or contractors it engages.
3. FUNDING. The parties anticipate that the total cost of the PROJECT shall be One Million Sixty-Eight Thousand One Hundred Eight-Four Dollars (\$1,068,184). The COUNTY agrees to fund PROJECT costs up to Five Hundred Thirty-Four Thousand Ninety-Two Dollars (\$534,092) and shall have no obligation to pay any costs beyond this maximum amount. The DISTRICT agrees to fund PROJECT costs up to Five Hundred Thirty-Four Thousand Ninety-Two Dollars (\$534,092) and shall have no obligation to pay any costs beyond this maximum amount. In the event that the total cost of the PROJECT exceeds \$1,068,184, the DISTRICT and COUNTY by mutual agreement, may provide additional funding or reduce the PROJECT scope. The DISTRICT shall pay PROJECT costs prior to requesting reimbursement from the COUNTY.
 - 3.1 The DISTRICT'S performance and payment pursuant to this Agreement are contingent upon the DISTRICT'S Governing Board appropriating funds in its approved budget for the PROJECT in each Fiscal Year of this Agreement. The COUNTY recognizes that DISTRICT has approved \$140,000 for the PROJECT, through Fiscal Year 2013. The additional funds identified in this Agreement are contingent upon approval of such amounts by the DISTRICT Governing Board, in its sole discretion, in its annual budgets for future fiscal years.
 - 3.2 The COUNTY shall reimburse the DISTRICT for the COUNTY'S share of the allowable PROJECT costs in accordance with the PROJECT budget contained in the Project Plan set forth in Exhibit "A." The DISTRICT may contract with consultant(s), contractor(s) or both and the budget amounts for the work set forth in such contract(s) will refine the amounts set forth in the Project Budget and be incorporated herein by reference. The COUNTY shall reimburse the DISTRICT for

fifty percent (50%) of all allowable costs in each invoice received from the DISTRICT, but at no point in time shall the COUNTY'S expenditure amount under this Agreement exceed expenditures made by the DISTRICT. Payment shall be made to the DISTRICT within forty-five (45) days of receipt of an invoice with adequate supporting documentation to satisfy auditing purposes. Invoices shall be submitted to the COUNTY at the following address:

Scott Cottrell, P.E.
Sumter County Public Works Division
319 East Anderson Avenue
Bushnell, Florida 33513

- 3.3 Any travel expenses which may be authorized under this Agreement shall be paid in accordance with Section 112.061, F.S., as may be amended from time to time.
- 3.4 The COUNTY shall not reimburse the DISTRICT for any purposes not specifically identified in Paragraph 2, Scope of Work.
- 3.5 Surcharges added to third party invoices are not considered an allowable cost under this Agreement.
- 3.6 Each DISTRICT invoice must include the following certification, and the DISTRICT hereby delegates authority by virtue of this Agreement to its Project Manager to affirm said certification:

"I hereby certify that the costs requested for reimbursement and the DISTRICT'S matching funds, as represented in this invoice, are directly related to the performance under the Jumper Creek Watershed Management Plan (N487-4) agreement between the Southwest Florida Water Management District and Sumter County (Agreement No. 2013REV0001), are allowable, allocable, properly documented, and are in accordance with the approved project budget."

- 4. COMPLETION DATES. The DISTRICT shall commence the PROJECT within six (6) months of contract execution, shall complete the PROJECT by September 30, 2016, and shall otherwise meet the task deadlines established in this Agreement, as may be extended by the parties in accordance with Paragraph 1 of this Agreement. In the event of hurricanes, tornados, floods, acts of God, acts of war, or other such catastrophes, or other man-made emergencies such as labor strikes or riots, which are beyond the control of the DISTRICT, the DISTRICT'S obligations to meet the time frames provided in this Agreement shall be suspended for the period of time the condition continues to exist. During such suspension, this Agreement shall remain in effect. The suspension of the DISTRICT'S obligations provided for in this provision shall be the DISTRICT'S sole remedy for the delays set forth herein.
- 5. CONTRACT PERIOD. This Agreement shall be effective upon execution by all parties and shall remain in effect through December 31, 2016, or upon satisfactory completion of the PROJECT and subsequent reimbursement to the DISTRICT, whichever occurs first, unless amended in writing by the parties.

6. PROJECT RECORDS AND DOCUMENTS. Upon request by the COUNTY, the DISTRICT shall permit the COUNTY to examine or audit all PROJECT related records and documents during or following completion of the PROJECT at no cost to the COUNTY. Payments made to DISTRICT under this Agreement shall be reduced for amounts found to be not allowable under this Agreement by an audit. The DISTRICT shall refund to the COUNTY all such disallowed payments. If an audit is undertaken by either party, all required records shall be maintained until the audit has been completed and all questions arising from it are resolved. Each party shall maintain all such records and documents for at least three (3) years following completion of the PROJECT. Each party shall allow public access to PROJECT documents and materials made or received by either party in accordance with the Public Records Act, Chapter 119, F.S. Should either party assert any exemption to the requirements of Chapter 119, F.S., the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the asserting party.
7. OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS. All documents, including reports, drawings, estimates, programs, manuals, specifications, and all goods or products, including intellectual property and rights thereto, purchased under this Agreement with COUNTY funds or developed in connection with this Agreement shall be and shall remain the property of the DISTRICT and the COUNTY, jointly.
8. REPORTS. Upon request by the COUNTY, the DISTRICT shall provide the COUNTY with copies of any and all reports, models, studies, maps or other documents resulting from the PROJECT.
9. LIABILITY. Each party hereto agrees to defend, indemnify and hold the other harmless, to the extent allowed under Section 768.28, F.S., from all claims, loss, damage and expense, including attorneys' fees and costs and attorneys' fees and costs on appeal, arising from the negligent acts or omissions of the indemnifying party's officers, employees, contractors and agents related to its performance under this Agreement. The indemnified party shall have the right to approve counsel selected by the indemnifying party. This provision does not constitute a waiver of either party's sovereign immunity or extend either party's liability beyond the limits established in Section 768.28, F.S. Additionally, this provision shall not be construed to impose contractual liability on either party for underlying tort claims as described above beyond the limits specified in Section 768.28, F.S.
10. DEFAULT. Either party may terminate this Agreement upon the other party's failure to comply with any term or condition of this Agreement, as long as the terminating party is not in default of any term or condition of this Agreement at the time of termination. To effect termination, the terminating party shall provide the defaulting party with a written "Notice of Termination" stating its intent to terminate and describing all terms and conditions with which the defaulting party has failed to comply. If the defaulting party has not remedied its default within thirty (30) days after receiving the Notice of Termination, this Agreement shall automatically terminate. If a default cannot reasonably be cured in thirty (30) days, then the thirty (30) days may be extended at the non-defaulting party's discretion, if the defaulting party is pursuing a cure of the default with reasonable diligence. The rights and remedies in this provision are in addition to any other rights and remedies provided by law or this Agreement.

11. RELEASE OF INFORMATION. The parties agree not to initiate any oral or written media interviews or issue press releases on or about the PROJECT without providing notices or copies to the other party no later than three (3) business days prior to the interview or press release. This provision shall not be construed as preventing the parties from complying with the public records disclosure laws set forth in Chapter 119, F.S.
12. RECOGNITION. The DISTRICT shall recognize COUNTY funding in any reports, models, studies, maps or other documents resulting from this Agreement, and the form of said recognition shall be subject to COUNTY approval.
13. LAW COMPLIANCE. Each party shall comply with all applicable federal, state and local laws, rules, regulations and guidelines, including those of the DISTRICT, related to performance under this Agreement. If the PROJECT involves design services, the DISTRICT'S consultants, regulation, and projects staff shall meet regularly during the PROJECT design to discuss ways of ensuring that the final design for the proposed PROJECT technically complies with all applicable DISTRICT rules and regulations.
14. ASSIGNMENT. Except as otherwise provided in this Agreement, no party may assign any of its rights or delegate any of its obligations under this Agreement, including any operation or maintenance duties related to the PROJECT, without the prior written consent of the other party. Any attempted assignment in violation of this provision is void.
15. CONTRACTORS. Nothing in this Agreement shall be construed to create, or be implied to create, any relationship between the COUNTY and any contractor of the DISTRICT.
16. THIRD PARTY BENEFICIARIES. Nothing in this Agreement shall be construed to benefit any person or entity not a party to this Agreement.
17. LOBBYING PROHIBITION. Pursuant to Section 216.347, F.S., the DISTRICT is hereby prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a state agency.
18. GOVERNING LAW. All aspects of this Agreement are governed by Florida law and venue shall be in Hernando County, Florida.
19. SEVERABILITY. If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
20. SURVIVAL. The provisions of this Agreement that require performance after the expiration or termination of this Agreement shall remain in force notwithstanding the expiration or termination of this Agreement including Paragraphs 6, 9, 19.
21. ENTIRE AGREEMENT. This Agreement and the attached exhibits listed below constitute the entire agreement between the parties and, unless otherwise provided herein, may be amended only in writing, signed by all parties to this Agreement.

22. DOCUMENTS. The following documents are attached and made a part of this Agreement. In the event of a conflict of contract terminology, priority shall first be given to the language in the body of this Agreement, and then to Exhibit "A."

Exhibit "A" Project Plan

IN WITNESS WHEREOF, the parties hereto, or their lawful representatives, have executed this Agreement on the day and year set forth next to their signatures below.

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By: _____
Robert R. Beltran, P.E. Date
Assistant Executive Director

SUMTER COUNTY

By: _____
Doug Gilpin, Chairman Date
Board of County Commissioners

COOPERATIVE FUNDING AGREEMENT
BETWEEN THE
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT
AND
SUMTER COUNTY
FOR
JUMPER CREEK WATERSHED MANAGEMENT PLAN (N487-4)

DISTRICT APPROVAL	INITIALS	DATE
LEGAL	<u>NWJM</u>	<u>1/23/13</u>
RISK MGMT	<u>N/A</u>	
CONTRACTS	<u>SPC</u>	<u>1/28/13</u>
BUREAU CHIEF	<u>KPH</u>	<u>1/28/13</u>
DIRECTOR	<u>MAN</u>	<u>1/30/13</u>
GOVERNING BOARD	<u>N/A</u>	

EXHIBIT "A" PROJECT PLAN

PROJECT DESCRIPTION

This is a multi-year funded project to perform the Watershed Evaluation and Watershed Management Plan elements of the DISTRICT'S Watershed Management Program for the Jumper Creek Watershed. The watershed covers a total area of approximately 79 square miles, located in Sumter County. The Watershed Evaluation includes existing watershed features, hydrologic and hydraulic feature inventory, identification of surveys, preliminary junction/reach GIS database, and surface water resource evaluation. The Watershed Management Plan includes surveys, watershed parameterization, developing a watershed model, floodplain analysis, peer review, public notification, public meeting, presentation to the Governing Board, level of service, surface water resource assessment, and recommendations of Best Management Practices (BMPs) to be pursued. The Watershed Management Plan will address flood protection and water quality issues. BMPs will be developed by conducting an alternative analysis. The alternative analysis will include the development of a BMP implementation plan, which will include prioritized recommendations with probable cost for implementation for selected BMPs.

All work related to this PROJECT will be performed in accordance with the DISTRICT Scope of Work Task Descriptions in the Watershed Management Program Guidance Documents, effective as of the date of the execution of this Agreement. These guidance documents can be found at http://ftp.swfwmd.state.fl.us/pub/GWIS/WMP_Guidance_Documents (User Name – Anonymous; Password – your email address).

PROJECT TASKS

To accomplish the PROJECT, the DISTRICT shall perform the following elements of the Watershed Management Program. The DISTRICT will issue Work Orders to its Consultant that will specifically define the Watershed Evaluation and Watershed Management Plan tasks that will be completed.

1. Watershed Evaluation is the systematic acquisition of generic watershed features and their assessment to gain an understanding of the complexity of a watershed. It consists of tasks related to the creation of a Geographic Information System (GIS) database and associated analyses for developing information about watershed features.
2. Watershed Management Plan development consists of tasks related to the management of surface water resources. It consists of tasks related to developing a watershed model, identifying associated floodplains, and preparing Level of Service determinations, surface water resource assessment and BMP reports to address flood protection and water quality issues.

PERFORMANCE SCHEDULE

The following Watershed Management Program elements will be completed within the timeframe set forth in Paragraph 4, Completion Dates. The DISTRICT will issue a notice to proceed to its Consultant no later than 6 months from the execution of the Agreement.

TASK DESCRIPTION	COMPLETION DATES
1. Watershed Evaluation	09/30/2014
2. Watershed Management Plan	09/30/2016

PROJECT BUDGET

TASK DESCRIPTION	DISTRICT	COUNTY	TOTAL
1. Watershed Evaluation	\$200,000	\$200,000	\$400,000
2. Watershed Management Plan	<u>\$334,092</u>	<u>\$334,092</u>	<u>\$668,184</u>
TOTALS	\$534,092	\$534,092	\$1,068,184

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Jumper Creek Watershed Project

ExH ②